

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 30447 of 2007(S)

PETITIONERS:

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1. DAMODARAN U., S/O. V.KELAPPAN,
AGED 62 YEARS, RETIRED SUB POST MASTER,
NUT STREET, VADAKARA, URALATH HOUSE,
P.O. MUDADI NORTH, (VIA) KOLLAM KOYILANDI-673 307,
CALICUT.
 2. GANGADHARAN M.,
S/O. M.KUNJIKRISHNAN NAIR, AGED 62 YEARS,
RETIRED ASSISTANT POST MASTER, HEAD POST OFFICE,
KOYILANDI, SREEPADAM, KOTHAMANGALAM,
KOYILANDI-673305, CALICUT.

BY ADV. SRI.R.SREERAJ

RESPONDENTS:

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1. THE SUPERINTENDENT OF POST OFFICES,
VADAKARA DIVISION, VADAKARA.
 2. THE CHIEF POST MASTER GENERAL,
DEPARTMENT OF POSTS, KERALA CIRCLE,
THIRUVANANTHAPURAM.
 3. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT OF
INDIA, MINISTRY OF COMMUNICATIONS, DEPARTMENT OF
POSTS, NEW DELHI.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) NO:30447/2007 S

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORIGINAL APPLICATION BY THE PETITIONERS BEFORE THE ERNAKULAM BENCH OF CAT WHICH WAS NUMBERED AS OA NO. 475/2003.

EXT.P2. COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS TO THE EXHIBIT P1 ORIGINAL APPLICATION.

EXT.P3. COPY OF THE REJOINDER FILED BY THE PETITIONERS TO THE EXT. P2 REPLY STATEMENT.

EXT.P4. COPY OF THE ADDL. REPLY STATEMENT FILED BY THE RESPONDENTS.

EXT.P5. COPY OF THE ADDL. REJOINDER FILED BY THE PETITIONERS.

EXT.P6. COPY OF THE 2ND ADDL. REPLY STATEMENT FILED BY THE RESPONDENTS.

EXT.P7. COPY OF THE FINAL ORDER DT. 6/6/03 IN OA NO. 475/03 ON THE FILE OF THE CAT, ERNAKULAM BENCH.

RESPONDENT'S EXHIBITS NIL.

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.30447 of 2007-S

Judgment

Balakrishnan Nair, J.

The petitioners joined service as Time Scale Clerks. Their next regular promotion posts are LSG (Lower Selection Grade), HSG II(Higher Selection Grade II) and HSG I. In 1983, the Department introduced upgradation of the posts of existing incumbents under TBOP Scheme (Time bound one promotion). By virtue of the said promotion, the petitioners were granted the scale of pay of LSG. Again, the Department introduced in 1991, the BCR (Biennial Cadre Review) Promotion scheme and the petitioners were placed in the grade of HSG II. They claim further promotion as HSG I. According to them, they should be treated as in the feeder category of HSG Grade II for promotion to HSG I. In support of this claim, they relied on Annexure A3 letter of the Department of Posts dated 17.05.2000, which was endorsed for communication on 06.11.2000. The relevant portion of the said letter reads as follows :

“It is further reiterated that placements under Time Bound One Promotion (TBOP) and Biennial Cadre Reviews (BCR)

Schemes are based on the length of service of the official(s) concerned and not on the criterion of seniority. Seniors in the gradation list, therefore cannot claim higher scale of pay at par with their juniors, if their juniors have got higher scale of pay by virtue of their completion of the prescribed period of service i.e. 16/26 years respectively. Juniors have been placed in the higher scale of pay based on their completing the requisite number of years' service which their seniors have not completed. In other words, TBOP/BCR schemes are not promotions against the norms based posts in LSG & HSG II grades but only placement in the same scales of pay on completion of 16 and 26 years of service respectively. Eligibility condition for placement in the higher scale of pay under the scheme is 16 and 26 years of service respectively. Clearly, seniors in gradation list will not be considered for next higher scale of pay from the date their immediate juniors become eligible for next higher grade without completing the prescribed period of service as per the eligibility condition of placements in the higher scale of pay. However, seniority in the gradation list will remain intact. TBOP and BCR officials will also be considered against

norms based posts (Supervisory posts) as per their seniority and fitness basis in their turn.”

The petitioners represented claiming promotion to the post of HSG I. When the same did not yield any results, they filed Ext.P1 OA before the CAT. The respondents filed Ext.P2 reply statement. According to them, the cadre post of HSG I can be filled up only in accordance with the Recruitment Rules. Though the petitioners are enjoying the scale of pay of HSG II, they cannot be treated as working in the cadre post of HSG II, it is submitted. The petitioners filed Ext.P3 rejoinder. The respondents filed additional reply statement Ext.P4. The petitioners also filed Ext.P5 additional rejoinder. The respondents filed another reply statement which is produced as Ext.P6.

2. The Tribunal, after hearing both sides, dismissed the OA by Ext.P7 Judgment. The learned counsel for the petitioners attacks Ext.P7. Heavy reliance is placed on Annexure A3. Going by Annexure A3, we feel that it contains instructions, which run counter to the claim of the petitioners. It says that notwithstanding the TBOP promotions, actual promotions to the cadre post will be made only in accordance with the seniority in the gradation list. TBOP and BCR promotions will not affect the seniority position in the gradation list,

which will remain in tact notwithstanding such promotions. We are of the view that the promotions to the post of HSG I can be made only in accordance with the Recruitment Rules. Though the petitioners are enjoying the scale of pay of HSG II, they have not been promoted to that cadre in accordance with the Recruitment Rules, having regard to their seniority in the feeder post and also the suitability assessed in accordance with law. Therefore, we find nothing illegal with Ext.P7. We agree with the reasoning and conclusions of the Tribunal. Accordingly, the Writ Petition fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

15.10.2007

T.R.RAMACHANDRAN NAIR, JUDGE

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